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No. 90-1787

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

In the Matter of the Application of The LUDLOW PARK HOMEOWNERS ASSOCIATION, HENRY SPALLONE as Mayor of the City of Yonkers, and G. OLIVER KOPPELL, as Assemblyman for the 80th Assembly District,

Petitioners,

vs.

THE COUNTY OF WESTCHESTER and the WESTCHESTER COUNTY BOARD OF LEGISLATORS,

Respondents,

UNITED STATES OF AMERICA and STATE OF NEW YORK,

Intervening-Respondents,

for an order pursuant to CPLR Article 78 reversing and annulling the determination of the respondents to the effect that an environmental impact statement regarding the construction of a sludge dewatering facility at the Yonkers sewage treatment plant is not to be required.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF AND APPENDIX OF WESTCHESTER COUNTY RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

MARILYN J. SLAATTEN
Westchester County Attorney
Attorney for Westchester County Respondents
600 Michaelian Office Building
148 Martine Avenue
White Plains, New York 10601
(914) 285-2673

CAROL L. VAN SCOYOC
Deputy County Attorney
Counsel of Record

MARGUERITE R. WIESS
Assistant County Attorney

QUESTION PRESENTED

1. Whether the United States District Court abused its discretion in accepting jurisdiction, pursuant to the All Writs Act, 28 U.S.C. §1651, over a New York State court proceeding which threatened to frustrate a Consent Decree entered by the District Court in an enforcement action brought by the United States, requiring Westchester County to cease dumping sewage sludge in the Atlantic Ocean by December 31 1991, as required by the Ocean Dumping Ban Act of 1988, 33 U.S.C. §§1414b and 1414c?

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CITATION OF OPINION BELOW

The Westchester County Respondents accept the Petitioners' citation of the opinion below which is reproduced in the Appendix attached to the Petition for Certiorari.

The Consent Decree and Enforcement Agreement, filed and entered in the United States District Court for the Southern District of New York in United States of America and State of New York v. County of Westchester and Westchester County Department of Environmental Facilities, (89 Civ. 5274 (WK)) and the District Court's Order, pursuant to 28 U.S.C. §1651, retaining jurisdiction over Ludlow Park Homeowners Association et al v. County of Westchester and Westchester

County Board of Legislators, are reproduced in the Appendix to this Brief.

STATEMENT OF THE CASE

A. Proceedings Below

This matter arose out of an action commenced in the United States District Court for the Southern District of New York by the United States of America seeking to enjoin the County of Westchester (County) from dumping sewage sludge into the Atlantic Ocean after December 31, 1991.* United States of America and State of New York v. County of Westchester and Westchester County

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*§1414b Ocean dumping of sewage sludge and industrial waste

(a) Termination of dumping

(1) Prohibitions on dumping Notwithstanding any other provisions of law -

...

(B) After December 31, 1991, it shall be unlawful for any person to dump into ocean waters ... sewage sludge ....

Department of Environmental Facilities, 89 Civ. 5274 (WK). Jurisdiction was asserted pursuant to 33 U.S.C. §1415(d) and 28 U.S.C. §§1331 and 1345. This action was settled in July 1989 by the entry of a Consent Decree and Enforcement Agreement, which among other things, required the County of Westchester to begin on-site construction of a sludge dewatering facility no later than October 1, 1990.*

The County immediately commissioned studies to determine the location, design and type of equipment for the dewatering facility. In February, 1990, the Westchester County

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*Consent Decree, Paragraph IV A.8. A complete copy of the Consent Decree is set forth in the Appendix to this Brief.

Board of Legislators, as lead agency under the New York State Environmental Review Act (SEQRA), [Article 8 of New York Environmental Conservation Law, 8 E.C.L. §8-0101 et seq.], and on the basis of a Full Environmental Assessment Form and numerous studies and reports submitted to it, resolved to locate the dewatering facility inside an already existing building at its Yonkers Joint Water Treatment Plant (YJWTP). It directed the Commissioner of Environmental Facilities to issue a Negative Declaration that the location of the facility at that site would have no significant impact on the environment.

Thereafter, the Petitioners herein commenced a proceeding in the New York State Supreme Court for Westchester

County pursuant to Article 78 of the New York Civil Practice Law and Rules, alleging that the issuance of the Negative Declaration was arbitrary, capricious and an abuse of discretion, and seeking a remand to the Board of Legislators and the preparation of an Environmental Impact Statement (EIS).

The County, pursuant to Paragraph XII of the Consent Decree, sought removal of the State court proceeding to the United States District Court, which had retained jurisdiction to resolve such disputes arising under its Consent Decree "as may be necessary or appropriate for its implementation".* The proceeding was removed and assigned to Judge Knapp as

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*Consent Decree, Paragraph XVIII

a related case to United States of America and State of New York v. Westchester County and Westchester County Department of Environmental Facilities, (89 Civ. 5274(WK)). At a hearing before Judge Knapp on May 10, 1990, the Petitioners indicated that they would move to remand the proceeding to the New York Supreme Court. The United States countered that it would move to retain jurisdiction pursuant to the All Writs Act, 28 U.S.C. §1651(a). Thereafter, Judge Knapp granted the government's motion to accept jurisdiction pursuant to the All Writs Act. A copy of this order is included in the Appendix to this Brief.

In July 1990 the District Court issued its Decision and Order on the

merits, dismissing Ludlow Park's petition, holding that the County followed the appropriate procedural requirements under SEQRA, and that its determination that the proposed facility would have no significant impact on the environment was rational and supported by the evidence.*

The petitioners appealed both the jurisdictional and environmental issues to the United States Circuit Court of Appeals for the Second Circuit, which affirmed both District Court orders in an unreported decision on February 19, 1991.

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*Petitioners have abandoned their appeal on the merits of the environmental question, which is not surprising considering that their major contention was that six to ten additional truck trips per day constituted a significant adverse impact on the environment.

B. The Facts

The Yonkers Joint Water Treatment Plant (YJWTP) occupies a thirty-five (35) acre site, approximately one half (1/2) mile long and three hundred (300) yards wide, covering 1,500,000 square feet on the Hudson River shoreline in an industrially zoned area. It has been in operation since 1955 and normally handles between 100,000,000 and 115,000,000 gallons of flow per day.

The existing building in which the dewatering facility will be housed is a single story 130' x 50' structure occupying approximately 1/2 of 1% of the total plant area, located a few hundred feet from both the existing sludge storage tanks and the primary

water treatment tanks. In order to accommodate the dewatering facility, the existing building is being altered by the addition of a second story and a 30' x 50' enclosed loading bay. Construction began as required by the Consent Decree on October 1, 1990 and has continued without interruption. The dewatering facility has now been substantially completed, and is scheduled to be placed in operation in accordance with the terms of the Consent Decree.

C. The Consent Decree

The Ocean Dumping Ban Act of 1988, 33 U.S.C. §§1414b and 1414c, provides that all ocean dumping of sewage sludge shall end by August 15, 1989, unless the agency doing the dumping enters into an Enforcement Agreement

pursuant to §1414b(c)(3) and obtains a temporary permit pursuant to §1412. In any event, all ocean dumping of sludge must end by December 31, 1991. Sections 1414b(c)(3) and (c)(4) set forth in considerable detail the provisions which must form a part of of the Enforcement Agreement.

The Consent Decree and Enforcement Agreement entered into by the parties in United States of America and State of New York v. County of Westchester and Westchester County Department of Environmental Facilities conforms to these requirements and contains, inter alia, the following provisions:

Paragraph IV - Implementation of Interim Land-Based Management of Sludge

1. completion of final equipment design - 12/31/89

2. advertise for sludge dewatering equipment - 2/1/90
3. completion of final design of facility - 4/1/90
4. award contract for equipment - 4/15/90
5. advertise for bids for all contracts - 5/15/90
6. award all contracts - 8/15/90
7. issue Notice to Proceed for construction of facility - 9/1/90
8. begin on-site construction of facility - 10/1/90
9. commence operation of sludge dewatering facility capable of processing 100% of County's sludge - 12/31/91

Paragraph V - Long Term Alternative Sludge Management

- seventeen separate steps beginning 1/1/89 and ending 9/15/95

Paragraph VI - Reports and Certifications

- requires, inter alia, monthly reports to the District Court, detailing the status and progress of all projects under Paragraphs IV and V

Paragraph X - Modifications

- must be subject to the approval or Order of the District Court

Paragraph XI - Appointment of Special Master

- "A special master shall be appointed and shall serve to monitor compliance with this Decree and the Agreement and to assist the Court in the enforcement thereof."

- He "shall submit quarterly written status reports to the Court, summarizing the progress on the tasks

listed in paragraphs IV and V ... and apprising the Court of problems that have or are expected to develop and of steps that are being or need to be taken to ensure timely completion of the tasks enumerated in paragraph IV and V and cessation of ocean dumping."

Paragraph XIII - Dispute Resolution - Any party may present a disputed matter to the Court "concerning any matter hereunder, including, without limitation, the schedules set forth in paragraphs IV and V."

Paragraph XIV - Satisfaction of Claims "The Enforcement Agreement contained in this Decree and Agreement is an Enforcement Agreement pursuant to MPRSA, 33 U.S.C. §1414b(c)(3). A violation of this Enforcement

Agreement is a violation of the MPRSA."* [emphasis added].

"Paragraph XVIII - Retention of Jurisdiction

"This Court shall retain jurisdiction to enforce the terms and conditions of this Decree and Agreement and to resolve disputes arising hereunder as may be necessary or appropriate for its implementation."

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*The Marine Protection, Research and Sanctuaries Act of 1972, 33 U.S.C. §§1401 et seq.

D. The Decision of the Second Circuit

In an unpublished opinion, filed February 19, 1991, the Court of Appeals held that it could overturn a decision to accept jurisdiction under the All Writs Act, 28 U.S.C. §1651 only if it found that the district court abused its discretion. Adams v. United States ex rel. McCann, 317 U.S. 269, 273 (1942). The Court of Appeals affirmed the lower court's judgment because the record indicated that the lengthy process involved in producing an Environmental Impact Statement would prevent the County from complying with the provisions of the Consent Decree and from ending the ocean dumping of sewage sludge by December 31, 1991.

Since a district court might issue an order "to effectuate and prevent the frustration of orders it has previously issued in its exercise of jurisdiction otherwise obtained", United States v. New York Telephone Co., 434 U.S. 159, 172 (1972), the Court of Appeals for the Second District upheld the retention of jurisdiction because "a remand to the State Court would threaten the 'very essence' of the Consent Decree", which was the cessation of ocean dumping by December 31, 1991. See Yonkers Racing Corp. v. City of Yonkers, 858 F.2d 855 (2d Cir. 1988), cert. denied, 109 S.Ct. 1527 (1989).

On the merits, the Court of Appeals held that "the County's conclusion that the project would have no significant

respect on the environment is rational and supported by the record."

SUMMARY OF ARGUMENT

This case is not of special importance and the United States Court of Appeals' decision conflicts neither with decisions of this Court nor other Circuits.

Petitioners raised only two jurisdictional issues below: 1) that the preparation of an Environmental Impact Statement would not interfere with the provisions of the Consent Decree; and 2) that the District Court lacked subject matter jurisdiction under 28 U.S.C. §1441 and therefore should have remanded the proceeding to the State court.

The latter argument has now been abandoned. For the first time,

petitioners now cursorily contend, in this Court, that the exercise of subject matter jurisdiction in this case, is unconstitutional pursuant to Article III, Section 2 of the Constitution.

ARGUMENT

THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE DENIED

A. The Petition does not present special or important reasons warranting review.

Petitioners assert that the United States Court of Appeals for the Second Circuit erroneously rejected their claims that the State court proceeding posed no threat to the implementation of the Consent Decree, and that the All Writs Act does not confer subject matter jurisdiction over their State court proceeding.

The Court of Appeals specifically held that: "The record indicates that the lengthy process involved in producing an EIS would result in substantial delay, preventing the County from complying with the series of interrelated milestone events

established by the Consent Decree to complete the phase-out of ocean dumping."

It further held that it might "only reverse a decision to issue an order under [the All Writs] Act if we find that the district court abused its discretion in reaching that decision. Adams v. United States ex rel. McCann, 317 U.S. 269, 273 (1943)."

Thus, the issues presented in this petition are whether the record contains sufficient evidence to support a finding that the preparation of an EIS would delay the completion of the project and whether the court, in this case and upon these facts, abused its discretion. These fact specific issues, while of interest to

the Petitioners, are not issues of broad application and do not affect the application of the All Writs Act in general, or enhance the scope of federal jurisdiction.

Even if the Petitioners' contentions were well-founded, this Court has never regarded its function as simply correcting a legal error perceived by disappointed litigants in a lower court decision.

The issues involved in this petition are so narrow and fact specific as to preclude this Court's decision from having any general application in the field of federal jurisdictional law.

B. There was sufficient federal concern for the District Court to retain jurisdiction

The District Court accepted jurisdiction over the New York State SEQRA proceeding, not because there was any inherent federal jurisdiction over the environmental questions, but because the very existence of the State court proceeding jeopardized the timely accomplishment of the major purpose of the Consent Decree - the cessation of all ocean dumping by December 31, 1991.

Any action which threatened to delay the milestone events specified in Paragraph IV of the Consent Decree, threatened a violation of the terms of the Enforcement Agreement, which in turn constituted a violation of MPRSA, 33 U.S.C. §1414(b) and (c) (see Consent

Decree, Paragraph XIV).

By the terms of the Consent Decree, Paragraph XVIII, the District Court retained jurisdiction "to enforce the terms and conditions of this Decree and Agreement and to resolve disputes arising hereunder as may be necessary or appropriate for its implementation." [emphasis supplied].

At the time the District Court was required to determine whether to retain jurisdiction over the State court proceeding, it was as yet unaware of the lack of merit to Petitioners' environmental objections. The District Court realized that if an EIS were required to be prepared, the milestone events of Paragraph IV, and the ultimate cessation of ocean

dumping, would be substantially delayed.

The District Court's familiarity with the matter, and its retention of jurisdiction* enabled it to resolve the environmental questions far more expeditiously than the State court. Furthermore, in the event that additional environmental studies were determined to be necessary, the mechanism of the Special Master provided a convenient vehicle for pinpointing the issues, expediting the acquisition of any additional information, preparing an EIS, and determining the sufficiency of the Environmental Impact Statement.

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*Paragraph XVIII of the Consent Decree

It begs the issue to argue, as Petitioners do, that the Consent Decree could have been modified to accommodate any delays occasioned by the State Court's resolution of the matter. The Ocean Dumping Ban Act of 1988 prohibited all dumping of sewage sludge into ocean waters after December 31, 1991. 33 U.S.C. §1414b(a)(1)(B). The object of the Consent Decree was not to facilitate a violation of federal law, but to set up procedures that would ensure compliance. Since the cessation of ocean dumping was of paramount importance, the District Court acted well within its discretion and in conformity with MPRSA and the Ocean Dumping Ban Act, in retaining jurisdiction over petitioners' SEQRA proceeding.

To hold otherwise would permit the frustration of orders previously issued by the District Court. United States v. New York Telephone Co., 434 U.S. 159 (1977).

C. There is no conflict between the Court of Appeals' decision below and the decisions of this Court or the other Courts of Appeal

This petition presents no special or important reasons for review by this Court. The chief cases cited by petitioners are those primarily relied upon by the respondents. United States v. New York Telephone Co., supra and Yonkers Racing Corp. v. City of Yonkers, 858 F.2d 855 (2d Cir. 1988), cert. denied, 109 S.Ct. 1527 (1989). The other federal cases cited all support federal jurisdiction and the enjoining of other state or federal court proceedings.

Both the District Court's exercise of discretion and the Court of Appeals' review and affirmance are rooted in prior Supreme Court decisions.

"This Court has repeatedly recognized the power of a federal court to issue such commands under the All Writs Act as may be necessary or appropriate to effectuate and prevent the frustration of orders it has previously issued in its exercise of jurisdiction otherwise obtained ...". United States v. New York Telephone Co., supra, at 172.

The "jurisdiction otherwise obtained" is the District Court's undoubted jurisdiction under 33 U.S.C. §1414b and §1415(d) to enforce the ban

on ocean dumping.

As this Court further declared:

"The power conferred by the Act extends, under appropriate circumstances, to persons who, though not parties to the original action or engaged in wrong doing, are in a position to frustrate the implementation of a court order ...". Id at 174.

The laws of the United States require the County to stop dumping its sewage sludge in the Atlantic Ocean by December 31, 1991. The United States sued the County in the United States District Court to force it to obey the law. As a result, the parties entered into a Consent Decree which requires the County to construct a sludge

dewatering facility by December 31, 1991. The construction of this facility is critical because there is no land-based system for the disposal sewage sludge unless it has first been dewatered. The Petitioners commenced an action in State Court, which, if successful, would have made it impossible for the County to comply with the law (33 U.S.C. §1414b). This case involves not only the issue of non-compliance with the terms of the Consent Decree, but also a direct violation of federal law.

The facts of the instant case bring it squarely within the bounds of this Court's prior decisions. Petitioners have not even suggested any legal authorities to the contrary. A decision on the merits

of Petitioners' contentions would add nothing to the already established law in this field since the facts here presented do not require an extension of the law of federal jurisdiction to new areas.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

MARILYN J. SLAATTEN
Westchester County Attorney
Attorney for the Westchester
County Respondents
600 Michaelian Office Building

148 Martine Avenue
White Plains, New York 10601
(914) 285-2673

Carol L Van Scoyoc

CAROL L. VAN SCOYOC
Deputy County Attorney
Counsel of Record

MARGUERITE R. WIESS
Assistant County Attorney

White Plains, New York
June 14, 1991

APPENDIX

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA AND
STATE OF NEW YORK,

CONSENT DECREE
DECREE AND
ENFORCEMENT
AGREEMENT
89 Civ. 5274 (WK)

Plaintiffs,

v.

COUNTY OF WESTCHESTER and
WESTCHESTER COUNTY DEPARTMENT OF
ENVIRONMENTAL FACILITIES,

Defendants.
----------x

WHEREAS, the Maine Protection, Research, and Sanctuaries Act ("MPRSA"), 33 U.S.C. §§1401 et seq., as amended by the Ocean Dumping Ban Act of 1988, Title I of Pub. L. 100-688, makes it unlawful for any person to dump, or to transport for the purpose of dumping, sewage sludge into the ocean after August 14,

1989, unless such person has obtained a permit for such dumping from the United States Environmental Protection Agency ("EPA") under Section 1412 of the MPRSA and has entered into a compliance agreement or enforcement agreement for the phasing out of such ocean dumping under Section 1414b of the MPRSA; and

WHEREAS, Section 1414b of the MPRSA requires that any enforcement agreement thereunder provide for the cessation of ocean dumping of sewage sludge and that it provide for the development and implementation of a long-term alternative system for management of the affected person's sewage sludge and authorizes the use of interim measures before completion of the alternative systems; and

WHEREAS, the United States, EPA, the State of New York (the "State"), and the County of Westchester (the "County" or the "defendant") enter into this Consent Decree and Enforcement Agreement ("Decree and Agreement") to ensure the phasing out and termination of ocean dumping, and transportation for the purpose of ocean dumping, of sewage sludge pursuant to the Ban Act; and

WHEREAS, the County has agreed to undertake all measures set forth herein to cease ocean disposal of all of its sewage sludge by December 31, 1991 through implementation of interim measures; and

WHEREAS, the County has agreed to develop and utilize a long-term

alternative system to its current ocean disposal of sewage sludge which shall dispose and/or reuse the sludge by September 15, 1995; and

WHEREAS, the County contends that it will choose its long-term disposal solution after an evaluation of alternatives in accordance with all applicable law; and

WHEREAS, the parties agree that they shall make all reasonable efforts to expedite the defendant's efforts to comply with its obligations under this Decree and Agreement, including the review of permits, applications or approvals as provided in paragraph XVII herein; and

WHEREAS, the United States, EPS, the State and the defendant have each consented to the making and entering of this Decree and Agreement, without trial or adjudication of any issues of fact or law, and without this Decree and Agreement constituting an admission by the County with respect to any such issues; and the Court having considered the matter and being duly advised, and it being in the public interest, it is hereby ORDERED and DECREED as follows:

I. JURISDICTION

This Court has jurisdiction over the subject matter and over the parties hereto under 28 U.S.C. §1345, and 33 U.S.C. §1415. Plaintiff's complaint states a claim upon which relief may be granted against the defendant.

II. APPLICATION AND BINDING EFFECT

The provisions of this Decree and Agreement shall apply to and be binding upon all parties to this Decree and Agreement, their officers, directors, agents, servants, employees, successors, assigns, contractors, and all persons, firms and corporations in active concert or participation with them. Prior to any transfer of ownership or operation of the defendant's publicly owned treatment works, the defendant shall give written notice of this Decree and Agreement to any successor9s) in interest and shall simultaneously notify, in writing, EPA and the State that such notice has been given to each successor in interest.

III. PHASING OUT OF OCEAN DUMPING

The County recognizes that the Marine Protection, Research, and Sanctuaries Act of 1972, 33 U.S.C. §1401, et seq. ("MPRSA"), as amended by the Ban Act, makes unlawful the disposal of sewage sludge in the ocean after December 31, 1991, and to that end the defendant has agreed to undertake all necessary steps, including the tasks outlined in paragraphs IV and V of this Decree and Agreement, to cease the ocean disposal of its sewage sludge. The Ban Act also requires that no ocean dumping or transportation for the purpose of ocean dumping sewage sludge shall be conducted after August 14, 1989, unless prior to such activity the defendant has obtained a new, effective ocean dumping permit under Section 1412 of the MPRSA.

In the event that the permit is stayed, the defendant shall comply with all terms and conditions of any permit issued, notwithstanding any challenge to the permit during the pendency of such challenge. Should ocean dumping continue under this Decree and Agreement beyond the effective term of the permit, and no new permit be issued, the conditions of the most recent permit issued to the defendant after May 31, 1989 shall continue to be complied with as conditions of this Decree and Agreement.

IV. IMPLEMTATION OF INTERIM LAND-BASED MANAGEMENT OF SEWAGE SLUDGE

A. The defendant shall implement dewatering measures for land-based management of sewage sludge in

compliance with the following milestone events:

1. Complete final design of the sludge dewatering equipment by December 31, 1989.

2. Advertise for sludge dewatering equipment by February 1, 1990.

3. Complete final design of the sludge dewatering facility by April 1, 1990.

4. Award contract for sludge dewatering equipment by April 15, 1990.

5. Advertise for bids for all contracts necessary to make the sludge

dewatering facility operable, by May 15, 1990.

6. Award all contracts necessary to make the sludge dewatering facility operable, by August 15, 1990.

7. Issue "Notice to Proceed" for on-site construction of the sludge dewatering facility by September 1, 1990.

8. Commence on-site construction of the sludge dewatering facility by October 1, 1990.

9. Substantially complete construction of and place into operation the sludge dewatering facility, capable of processing 100% of the County's sludge, by December 31, 1991.

Substantial completion shall be defined as the facility being capable of dewatering 100% of the County's sludge.

B. The defendant shall take the following additional measures to implement land-based interim sludge management:

1. The County shall have fully executed contracts, which shall include sufficient measures to ensure back-up capacity, necessary for the interim land-based management of the County's sewage sludge, by August 31, 1991.

2. The County shall cease ocean dumping of all sewage sludge by December 31, 1991.

C. Nothing set forth in Schedule IV.A shall preclude the County from implementing interim measures by other means provided that (i) the County shall cease ocean dumping of all sewage sludge by December 31, 1991, (ii) such substituted method, if any, provides for reliable land-based management of sewage sludge, and (iii) all parties agree to the substitution and a modification in accordance with paragraph X is obtained.

V. LONG-TERM ALTERNATIVE SLUDGE MANAGEMENT

The defendant shall implement a long-term alternative plan for the management and disposal of sewage sludge presently transported or dumped by the defendant. In implementing its long-term alternative system of

sewage sludge management and disposal,defendant shall comply with the following schedule:

1. commencement of detailed sludge management facility planning to identify the long-term alternative system to be used to ensure permanent phase-out and termination of ocean dumping of sewage sludge, by January 1, 1989.

2. Completion and submittal of detailed acceptable land-based sludge management facility plan for the selected long-term alternative system by March 1, 1991.

3. Initiate selection process for preparation of all final engineering designs and related specifications for

the long-term alternative system selected, by September 1, 1991.

4. Establishment of local pretreatment limit modifications as necessary for the long-term alternative system by January 31, 1992.

5. Award contract and commence preparation of all final engineering designs and related specifications for the long-term alternative system selected, by February 1, 1992.

6. Submit applications for all necessary local, state and federal permits for the long-term alternative system selected, by February 1, 1993.

7. Complete preparation of all

final engineering designs and related specifications for the long-term alternative system selected, by May 1, 1993.

8. Advertise for bids for the necessary equipment and construction of the long-term alternative system by June 1, 1993.

9. Acquire sites for the long-term alternative system selected, by June 1, 1993.

10. Secure all necessary permits for construction of the long-term alternative system selected, by August 1, 1993.

11. Award contracts for the

necessary equipment and construction of the long-term alternative system by September 1, 1993.

12. Issue "Notice to Proceed" for on-site construction of facilities for the long-term alternative system selected, by September 15, 1993.

13. Commence on-site construction of facilities for the long-term alternative system selected, by September 30, 1993.

14. Substantially complete construction of facilities and installation of equipment for the long-term alternative system selected, by June 1, 1995. Substantial completion shall be defined as completion such that

the facilities and equipment are capable of meeting their intended purpose.

15. Enforce full compliance by local industrial users with all local pretreatment limits by January 31, 1995.

16. Commence testing of the long-term alternative system by July 1, 1995.

17. Complete testing of the long-term alternative system and commence full operation of said system by September 15, 1995.

VI. REPORTS AND CERTIFICATIONS

A. Beginning with the second calendar month after execution of this Decree and Agreement by all parties, and continuing

monthly thereafter, the defendant shall submit in writing to the Court, the special master, the United States and the State at the addresses set forth in paragraph IX, a report and certification detailing the status and progrees of the projects under paragraphs IV and V for phasing out and terminating ocean dumping of sewage sludge and implementing interim measures and a long-term alternative system of sludge management. Such report and certification shall include a description of the work performed in the previous month and a projection of the work to be performed during the following twelve-month period pursuant to this Decree and Agreement.

B. Within five days after execution of this Decree and Agreement by all parties,

the defendant shall designate a responsible official to ensure that the implementation of this Decree and Agreement proceeds as smoothly and efficiently as possible and that the terms of this Decree and Agreement are complied with. In connection with the reports and certifications required to be submitted, such designated official shall certify that the defendant has met all schedule milestones in the prior month, and assess whether the defendant shall continue to meet all scheduled milestones set forth in paragraphs IV and V of this Decree and Agreement. Where such designated official is unable to so certify, such designated official shall identify: the noncompliance; the reasons therefor; the measures being taken to remedy the noncompliance; the

work remaining to be done to achieve full compliance, including a schedule for completion of such work, and the impact, if any, on compliance with the final schedule dates set forth in paragraphs IV and V; and an acceleration plan to ensure that the schedule dates in paragraphs IV and V shall be complied with. The reports and certifications shall be submitted for each month by certified mail, return receipt requested, by the fifteenth day of the following month. If defendant's report or certification indicates noncompliance, the report or certification shall also be submitted by telefax.

C. The EPA and the State shall confer quarterly to evaluate the compliance of the defendant with the schedules

established in paragraphs IV and V. Upon fifteen days notice from either EPA or the State, the defendant shall provide a properly informed and authorized representative for such conference to discuss progress and problems in the planning, design and construction of the alternative systems for sludge management and the interim measures needed to eliminate the ocean dumping of sewage sludge. The EPA and the State shall endeavor to schedule meetings at which the presence of defendant is requested in conjunction with a special master meeting or other meeting already scheduled.

D. The defendant shall submit to EPA and the State a quarterly report detailing the volume of sludge dumped in

the ocean during the preceding quarter, the amount of fees or penalties owing for that volume, the date and amount of payment of said fees or penalties to its trust account, the Clean Oceans Fund, State water pollution control revolving fund, and EPA, and copies of the checks for each payment made. This report shall be submitted on the fifteenth day of the second month following the end of the calendar quarter. The first report shall be submitted on November 15, 1989.

VII. STIPULATED PENALTIES

A. If the defendant fails to comply with any applicable requirements of paragraphs IV and V of this Decree and Agreement, the defendant shall pay stipulated penalties in the following amounts for each day of each and every

violation of said requirements:

Days of Non-compliance or Violation	Penalty for Violations Per Day
1-30	$ 1,000
31-60	$ 5,000
Beyond 60 Days	$10,000

Payments shall commence within ten days of demand and shall become due and payable monthly thereafter.

B. If the defendant fails to comply with any applicable requirements of paragraph VI of this Decree and Agreement, the defendant shall pay stipulated penalties in the following amounts for each day of each and every violation of said requirements:

Days of Non-compliance or Violation	Penalty for Violations Per Day
1-30	$100
31-60	$200
Beyond 60 Days	$500

Payments shall commence not later than thirty days from the date of the violation and shall become due and payable monthly thereafter.

C. The stipulated penalties set forth in subparagraphs A and B above shall begin to accrue on the day that performance is due or non-compliance occurs, and shall continue to accrue through the final day of correction fo the non-compliance. Each separate violation of this Decree and Agreement shall constitute a separate penalty event, and nothing herein shall prevent

the simultaneous accrual of separate penalties for separate violations of this Decree and Agreement. Fifty (50) percent of the penalty shall be paid to the State. Penalties due to the United States shall be paid by tendering a check in the appropriate sum, payable to "Treasurer of the United States," and sent by certified mail, return receipt requested, to the United States Attorney for the Southern District of New York with a copy to EPA and the New York State Department of Environmental Conservation ("NYSDEC"). Penalties due to the State shall be paid by tendering a check in the appropriate sum, payable to "Comptroller of the State of New York," and sent by certified mail, return receipt requested, to the Office of the State Comptroller, Alfred E.

Smith Office Building, Swan Street, 6th Floor, Albany, New York 12236, with copies sent to NYSDEC, New York State Department of Law ("NYSDOL") and EPA. Interest shall accure on any stipulated penalty not paid when due at the rate established by the Department of the Treasury under 31 U.S.C. §3717.

D. Except for stipulated penalties resulting from defendant's failure to comply with the milestone events set forth in paragraphs IV.A.8, IV.A.9, IV.A.B.1, IV.B.2, V.11, V.14 and V.17, any stipulated penalties incurred by defendant for failure to achieve any other milestone date in the schedules set forth in paragraphs IV or V shall be forgiven upon the defendant's timely achievement of the next subsequent

milestone date in that schedule, provided that the following conditions are met. Such stipulated penalties shall be paid timely and within 10 days of demand by EPA or the State by tendering a check in the appropriate sum to the agent of an escrow account to be established for each schedule hereunder. If defendant thereafter demonstrates compliance with the next subsequent milestone event set forth in the schedule, then all stipulated penalties paid and held in escrow for violation of the preceding missed milestone event shall be returned to the defendant. If, however, the defendant fails to comply with the next subsequent milestone event set forth in the schedule, then the escrow agent shall pay the entire balance of the escrow account for that

schedule, including all interest earned thereon, to the "Treasurer of the United States" and the "Comptroller of the State of New York" in accordance with paragraph VII.C hereof. Nothing contained herein shall relieve the defendant of any obligation to pay any stipulated penalties hereunder that the defendant fails to pay into the escrow account or which the escrow agent fails to pay to the United States and the State.

E. In the event that defendant claims that a force majeure event, as defined in paragraph XII of this Decree and Agreement, has occurred such that no stipulated penalty is due for a missed milestone date, defendant shall pay the stipulated penalty into the escrow

account in accordance with the procedure set forth in VII.D above and such payment shall be held by the escrow agent pending resolution of the defendant's claim of force majeure pursuant to paragraphs XI, XII and XIII. If it is determined that no stipulated penalty is due, then all stipulated penalties paid and held in escrow for the violation of the milestone dates at issue shall be returned to the defendant. If, however, it is determined that the stipulated penalty is due because the delay was not caused by a force majeure event, then the escrow agent shall pay the entire balance of the escrow account for that schedule, including all interest earned thereon, to the "Treasurer of the United States" and the "Comptroller of the

State of New York" in accordance with paragraph VII.C hereof.

F. In addition to the stipulated penalties set forth above and the fees and penalties established by the Ban Act, the civil penalties and other relief provided by the MPRSA at 33 U.S.C. §1415 for violations of permits issued under 33 U.S.C. §1412 and of this Decree and Agreement shall apply and remain in effect.

G. In the event of failure to pay stipulated penalties, as set out above, this matter may be referred to the United States Attorney and the State Attorney General for collection. Defendant shall be liable for plaintiffs' expenses, including

attorney's fees, in such collection action.

VIII. STATUTORY FEES AND PENALTIES

A. In accordance with Sections 1414b(b)(1) and 1414b(d)(1) of the MPRSA, the defendant shall pay the following fees and penalties, separate and apart from any penalties that it may be liable for under paragraph VII, for the sewage sludge it dumps in the ocean:

Between August 15, 1989 and December 31, 1989 inclusive	A fee of $100 per dry ton
During 1990	A fee of $150 per dry ton
During 1991	A fee of $200 per dry ton

The quantity of dry tons shall be based upon the monthly average of percent solids for the sludge dumped, or weighted average of percent solids if

defendant has more than one wastewater treatment plant. Penalties for dumpingsewage sludge or transporting sewage sludge for the purpose of dumping it in the ocean shall be calculated for any dumping after December 31, 1991 as set out in Section 1414b(d)(1) of the MPRSA. Such penalties are mandatory and independent of any civil penalties assessed or collected pursuant to Section 1415 of the MPRSA and of any stipulated penalties assessed or collected pursuant to this Decree and Agreement.

For the purpose of determining the applicable per-dry-ton fee or penalty, the date and time of initiation of discharge from the vessel (as reported on the Ocean Dumping Notification Form)

shall be used.

B. Payments of statutory fees andpenalties assessed under paragraph VIII.A shall be made on a quarterly basis, on the last day of the month following the end of a calendar quarter. The first payment, for sewage sludge dumped or for dumping initiated during the calendar quarter ending September 30, 1989, shall be made by October 31, 1989. For the purpose of determining the calendar quarter in which sludge was dumped, the date and time of initiation of discharge from the vessel (as reported on the Ocean Dumping Notification Form) shall be used.

C. The defendant shall establish a trust account pursuant to Section

1414b(e) of the MPRSA for the payment and use of that portion of the fees and penalties established by the Ban Act that are to be deposited in this trust account. The defendant must receive written approval from EPA of its trust account prior to August 14, 1989. No sewage sludge may be transported for the purpose of ocean dumping or ocean dumped under this Decree and Agreement unless prior to such transport or disposal the defendant has secured approval of its trust account by EPA.

D. Defendant shall pay fees and penalties in accordance with Sections 1414b(b)(2)(c) and 1414b(d)(2)(c)(i) into the Clean Oceans Fund established under Section 1414b(c)(5) and the water pollution control revolving fund

established under Title VI of the Federal Water Pollution Control Act. In the event that the State has not established a Clean Oceans Fund or water pollution control revolving fund by February 28, 1990, fees and penalties required to be paid to the Fund or revolving fund by defendant shall be paid to EPA pursuant to Section 1414b(b)(5).

E. In accordance with the MPRSA, Sections 1414b(b)(2) and 1414b(d)(2), fees shall be paid as set forth below to the following recipients for each dry ton of sewage sludge dumped in the ocean:

Fee And Penalty Per Dry Ton Dumped

Year in Which Sludge Was Dumped	Recipients: EPA	Trust Account	Clean Oceans Fund*	State Water Pollution Control Revolving Fund
1989	$15.00	$ 85.00	--	--
1990	15.00	127.50	83.75	83.75
1991	15.00	170.00	7.50	7.50

*If established; if not, to EPA pursuant to paragraph VIII.D.

After December 31, 1991, payment and distribution of penalties shall be computed and paid in accordance with Section 104B(d)(2) of the MPRSA.

F. Fees and penalties paid to EPA under paragraph VIII.E shall be paid by check made payable to the "Treasurer of the United States," and delivered by certified mail, return receipt requested, to EPA. Fees and penalties paid to the Clean Oceans Fund shall be paid by check made payable to the "Comptroller as Custodian of the Clean Oceans Fund" and delivered by certified mail, return receipt requested, to the State. Fees and penalties paid to the state water pollution control revolving fund shall be paid by check made payable to the "New York State Environmental

Facilities Corporation as Custodian of the state water pollution control revolving fund" and delivered by certified mail, return receipt requested, to the State. Fees and penalties paid to the trust account shall be paid to the trustee for said account. For each payment recipient, if a payment is not received on or before the day on which payment is to be made pursuant to paragraph VIII.B, interest will be assessed against defendant at the annual rate established by the Secretary of the Treasurey pursuant to 31 U.S.C. §3717, on the overdue amount from the day on which it was due throught the date of payment. Failure to pay the fee or penalty in full according to the above provisions will result in referral of this matter to

the United States Attorney and the State Attorney General for collection. Interest on late payments shall be paid to EPA for untimely payments to EPA or the defendant's trust account and tothe State for untimely payments to it or to its revolving fund or Clean Oceans Fund. Interest on late payments shall be deposited in the U.S. Treasury or State Treasury as appropriate as general funds. Defendant shall be liable for plaintiffs' expenses, including attorneys' fees, in such collection action(s).

G. In the event of defendant's failure to make full payment of the fee or penalty to the trust account in accordance with paragraph VIII of this Decree and Agreement within thirty days

of the date on which it was due or defendant's failure to use amounts withdrawn or received from the account in accordance with Section 1414b(e) of the MPRSA and this Decree and Agreement, EPA may, upon finding such a failure to have occurred and upon fifteen business days written notice, direct the trustee of the trust account to pay the balance of the amount in the trust account to the State for use in accordance with Section 1414b(e)(2)(C) of the MPRSA. Pending final resolution of any district court challenge, the trustee shall continue to hold the funds in the trust account.

H. Fees and penalties paid to the trust account, the State, the Clean Oceans Fund, or the state water

pollution control revolving fund shall be used subject to the restrictions of Section 1414b(c)(5), (e) and (f) of the MPRSA. The defendant shall conduct audits on an annual basis to establish that such fees and penalties were paid to the appropriate accounts. The defendant shall obtain the services of an auditor to conduct separate audits, on an annual basis of defendant's expenditures from the trust account and from funds provided to it from the Clean Oceans Fund, to demonstrate compliance with Section 1414b(c)(5) and (e) of the MPRSA. Costs incurred by the defendant pursuant to this Decree and Agreement and paid from the trust account and from funds provided to defendant from the Clean Oceans Fund shall be necessary and reasonable, and allocable to the

projects allowed by Sections 1414b(c)(5) and (e). The defendant may look to the applicable cost principles on OMB Circular A-87 (46 Federal Register 9548 (1981)) for guidance in determining allowable costs. Such audit reports required of the defendant shall be submitted to EPA and the State within 90 days after the end of each calendar year.

I. Upon execution of this Decree and Agreement and continuing biannually thereafter, the defendant shall submit to the Regional Administrator of EPA, Region II, and the State a scope of work for each project that will require funding from the trust account in the following six-month period. The first submission shall be due by August 30, 1989 and shall cover the period from

August 15, 1989 through December 31, 1989. Subsequent submissions shall be due 60 days prior to commencement of the next six-month period (i.e., October 30, 1989, April 30, 1990, etc.). Each scope of work will consist of a description of the major activities to be funded in each project, the required level of funding for each such activity and a cumulative six-month payment schedule based upon projected costs to be incurred.

J. The Regional Administrator of EPA, Region II, will approve or disapprove the scope of work and level of funding for the major activities. EPA will notify the trustee of the trust account, the State and the defendant of EPA's approval or disapproval of the

scope of work and level of funding and will provide the trustee with a list of the approved activities, funding levels and associated payment schedule. If EPA fails to act on the defendant's proposed scope of work and payment schedule within 60 days of its receipt, the defendant may submit the scope of work and payment schedule to the trustee together with a certification that EPA has failed to disapprove use of the trust account as required in Section 1414b(e)(2)(A).

K. The defendant may request funds from the trustee for immediate cash disbursements based upon costs incurred. The trustees will disburse funds in accordance with the scope of work and approved payment schedule. If

the defendant anticipates that funding needs will exceed the levels in the approved scope of work, the defendant may seek approval for such additional funding from EPA.

IX. NOTIFICATIONS

A. Except as specified otherwise, when written notification to or communication with the United States, EPA, the State or the defendant is required by the terms of this Decree and Agreement or when payment of a fee or penalty is to be made, it shall be sent by certified mail, return receipt requested, and addressed as follows:

As to the United States of America:

United States Attorney's Office
Southern District of New York
One St. Andrew's Plaza
New York, New York 10007

Attention: Chief, Environmental
Protection Unit

United States Department of
Justice
Land & Natural Resources Division
10th & Constitution Ave., N.W.
Washington, D.C. 20530
Attention: Chief, Environmental
Enforcement Section

United States Environmental
Protection Agency
Office of Regional Counsel
26 Federal Plaza
New York, New York 10278
Attention: Chief, Water, Grants
and General Law Branch

As to EPA Region II:

Financial Management Branch
Policy and Management Division
United States Environmental
Protection Agency
26 Federal Plaza
New York, New York 10278
(for payment of fees or penalties)

Water Management Division
United States Environmental
Protection Agency
26 Federal Plaza
New York, New York 10278
Telephone No.: (212) 264-2513
Telefax No.: (212) 264-2194
(for all other notifications or
communications)

As to State:

Office of the State Comptroller
Alfred E. Smith Office Building
Swan Street, 6th Floor
Albany, New York 12236
(for payment of fees or penalties to Clean Oceans Fund and stipulated
penalties with copies to NYSDEC and NYSDOL)

New York State Environmental Facilities Corporation
50 Wolf Road
Albany, New York 12233
(for payment of fees or penalties to state water pollution control revolving fund with copies to NYSDEC and NYSDOL)

Commissioner
New York State Department of Environmental Conservation
50 Wolf Road
Albany, New York 12233
(for all notifications or communications and copies of payment
of all fees and penalties)

New York State Department of Law
Environmental Protection Bureau
120 Broadway
New York, New York 10271
(for all notifications or communications and copies of payment of all fees and penalties)

As to defendant:

Westchester County Department of
Environmental Facilities
400 Michaelian Office Building
148 Martine Avenue
White Plains, New York 10601
Telephone No.: (914) 285-2455

Westchester County Department of
Environmental Facilities
600 Michaelian Office Building
148 Martine Avenue
White Plains, New York 10601
Telephone No.: (914) 285-2690

Notifications to or communications with the United States, EPA, the State or the defendant shall be deemed submitted on the date they are telefaxed or postmarked and sent by certified mail, return receipt requested, whichever occurs later.

B. Reports required to be submitted pursuant to paragraph VI shall be signed by the responsible official of the defendant designated pursuant to

paragraph VI.B and shall include the following certification statement: "I certify that the information contained in or accompanying this submission is true, accurate, and complete."

X. MODIFICATION

Except as provided for herein, there shall be no modification of this Decree and Agreement without written approval of all of the parties to this Decree and Agreement, subject to the approval of the Court, or Order of the Court. Nothing herein shall be construed to limit any party's rights pursuant to Rule 60(b) of the Federal Rules of Civil Procedure.

XI. APPOINTMENT OF SPECIAL MASTER

A. Pursuant to the provisions of the Rule 53 of the Federal Rules of Civil Procedure and Rule 19 of the Civil Rules of the United States District Court for the Southern District of New York, a special master shall be appointed and shall serve to monitor compliance with this Decree and the Agreement and to assist the Court in the enforcement thereof. This special master shall have the following duties, responsibilities and powers:

1. The special master shall monitor the progress of the defendant in carrying out the tasks enumerated in paragraphs IV and V. To this end the special master shall attend all progress meetings concerning the above-referenced

schedules and receive copies of all progress reports and correspondence. The special master shall copy all his/her correspondence and other written communications with any party to all parties, and shall notify all parties of any physical inspections or site visits he/she conducts. The special master shall minimize ex parte contacts with any party.

2. The special master shall submit quarterly written status reports to the Court, summarizing the progress on the tasks listed in paragraphs IV and V and defendant's compliance with this Decree and Agreement, and apprising the Court of problems that have or are expected to develop and of steps that are being or need to be taken to ensure

timely completion of the tasks enumerated in paragraphs IV and V and cessation of ocean dumping.

3. The special master shall attempt to anticipate and avoid potential problems. In carrying out his/her responsibilities under this paragraph XI, the special master may, upon adequate notice, require submissions from the parties, attendance at meetings and/or participation in hearings. The special master may require the production of an rule upon the admissibility of evidence and has the authority to put witnesses under oath and may examine them and call parties to the action and examine them under oath. All hearings before the special master be on the record.

4. The parties may in the first instance apply to the special master with respect to (i) enforcement of this Decree and Agreement, including stipulated penalties as provided for in paragraph VII, (ii) disputes arising under the terms of the Decree and Agreement, or (iii) any proposed amendment or modification of paragraph IV or V of this Decree and Agreement. The special master may make recommendations in accordance with paragraph XII concerning such proposed amendments or modifications.

5. The special master shall make his/her recommendations provided for in paragraph XI.A.4 in the form of a report filed with the Court within 30 days of receipt of stipulations or submissions

by the parties or within 30 days of the conclusion of a hearing, if any.

B. The special master shall have the following minimum qualifications:

1. A law degree; and

2. Extensive experience in the environmental law field and/or in the building or mangement of large public construction projects or programs; and

3. Experience involving dispute resolution.

C. No later than September 30, 1989, the parties shall submit to the Court the names in order of preference to be considered for appointment as special master. If the parties cannot agree on such names, they shall each

submit a separate list of candidates by September 30, 1989. The Court may select a special master from the names submitted or may conduct such proceedings as it requires to make a selection.

D. compensation for the special master shall be paid by the defendant at a rate to be fixed by the Court. The special master may make interim applications for compensation from time to time during the period of his/her performance and may seek compensation or reimbursement for reasonable costs and expenses incurred in fulfilling his/her obligations under this Decree and Agreement, including all necessary expert and staff assistance. The special master shall not retain any

experts without first seeking approval of all of the parties sand such approval shall not be unreasonably withheld.

E. All reports of the special master shall be filed with the Court. Except for status reports pursuant to paragraph XI.A.2, all reports and recommendations, including any facts therein, shall be reviewable de novo by the Court. Within 10 days after being served with any such report, any party may file written comments. Application to the Court for action upon the report and upon comments thereto shall be by motion on notice, pursuant to the Court's rules. The Court after hearing may accept any recommendations contained in the report or may modify it or may reject it in whole or in part or may

receive further evidence or may recommit it to the special master with instructions. Reports of the special master shall not be deemed adopted by the Court except upon order of the Court.

XII. FORCE MAJEURE

A. A force majeure event is an event (in accordance with applicable case law, including but not limited to, Act of God; commercial impracticability (i.e., extraordinary costs); contractor or supplier default; failure of a federal or state regulatory agency to issue any necessary permit or approval in a timely fashion where the defendant has timely submitted in good faith a complete and legally sufficient application and all necessary supporting information in accordance with all

applicable laws and regulations; or a judicial injunction issued by a court of competent jurisdiction directed against work actually being performed in furtherance of sludge treatment and disposal facilities, provided that the defendant has exercised due diligence and best efforts in seeking removal to this court and in resisting such injunction, including appeals, and the defendant has acted in accordance with applicable statutes and regulations) that is beyond the control of the defendant and which causes a delay in implementing any of the measures required by this Decree and Agreement. If such event occurs, defendant shall be entitled to a modification of the schedule milestones to the extent that such event was beyond the control of the

defendant. The defendant bears the burden of establishing that the event was beyond its control and of demonstrating the amount of delay that is necessary because of the force majeure event. As a condition precedent to obtaining any relief under this provision, defendant shall notify the Court and all the parties in writing that a force majeure event has occurred no later than 90 days after the date defendant knew or should have known of the occurrence of any force majeure event.

B. The notice to EPA and the State, required above, shall include, to the extent such information is available at the time of such notification:

1. The anticipated length of time of the delay;

2. The cause of the force majeure event;

3. Measures taken to minimize the delay including time table for implementation of any such measures;

4. Proposed date by which subsequent schedule milestone will be achieved; and

5. Activities that can be taken to minimize the impact of the force majeure event on the overall schedule.

C. If all the parties agree that a failure to comply with any requirement of this Decree and Agreement, including a schedule milestone in paragraph IV or V was caused by a force majeure event,

the parties may seek an amendment to this Decree and Agreement containing such proposed modifications, including revised schedule milestones as may be necessary, and no stipulated penalties shall be incurred. If the parties agree that an extension is necessary, the schedule of milestone dates under paragraphs IV or V, shall be extended for the period of time caused by the force majeure event. In the event that revision of the schedule milestones is necessary, the defendant agrees to make every effort to ensure that the milestone events set forth in paragraphs IV.A.8, IV.A.9, IV.B.1, IV.B.2, V.11, V.14 and V.17 are not extended.

D. If the parties cannot agree that a failure to achieve milestone

dates was beyond the control of the defendant, the defendant may, within 30 days following the missed milestone event, apply to the special master for a recommendation as to whether all or part of the delay was excusable due to a force majeure event.

E. If, for any reason, the defendant fails to achieve any schedule milestones established in paragraph IV or V and the parties cannot agree that the remainder of the schedule milestones will be affected, or how they will be affected, then the defendant may, within 30 days following the missed schedule milestone, petition the special master for a recommendation concerning the failure to achieve the milestone date(s) requires a revision of all or part of

the remainder of the schedule milestones as established in paragraphs IV or V. Whenever a milestone is missed, the defendant shall exercise its best efforts to recoup all lost time, including, where appropriate, the payment of extraordinary expenses for overtime, double shifts or additional contractors or consultants or alternative methods.

XIII. DISPUTE RESOLUTION

Nothing in this Decree and Agreement shall prevent any party from presenting a disputed matter to the Court, at any time, concerning any matter hereunder, including, without limitation, the schedules set forth in paragraphs IV or V. The filing of a petition asking the Court to resolve a dispute shall not by

itself extend or postpone any obligation of the defendant under this Decree and Agreement, provided further that nothing herein shall prevent an affected party from applying to the Court, upon notice to all parties, for a stay of relief authorized or directed by this Decree and Agreement.

XIV. SATISFACTION OF CLAIMS

Full compliance with this Decree and Agreement shall constitute full satisfaction of all claims alleged herein. The Enforcement Agreement contained in this Decree and Agreement is an Enforcement Agreement pursuant to the MPRSA, 33 U.S.C. §1414b(c)(3). A violation of this Enforcement Agreement is a violation of the MPRSA. The EPA and State do not, by their entry into

this Enforcement Agreement, warrant or aver in any manner that the defendant's complete compliance with this Enforcement Agreement will result in compliance with the provisions of the MPRSA, 33 U.S.C. §1401 et seq., including the Ban Act. Notwithstanding EPA's and the State's review and approval of any plans formulated pursuant to this Enforcement Agreement, defendant shall remain solely responsible for compliance with the terms of the MPRSA, this Decree and Agreement, and defendant's ocean dumping permit.

XV. COMPLIANCE WITH OTHER LAWS

This Decree and Agreement in no way affects or relieves the defendant of responsibility to comply with any other

Federal, State, or local law or regulation. Nothing contained in this Decree and Agreement shall be construed to prevent or limit the EPA's or State right to obtain penalties or injunctive relief under the MPRSA or other federal or state statutes or regulations.

XVI. RESERVATIONS OF RIGHTS

The EPA and State do not waive any rights or remedies available to them for any violation by defendant of Federal or State laws, or regulations following completion of the requirements of this Decree and Agreement.

XVII. REVIEW OF PERMIT APPLICATIONS

The defendant, EPA and State shall take all possible steps to expedite the submission and review, as appropriate,

of any permits, applications or approvals needed for completion of the interim measures and long-term alternative system(s) set forth in paragraph IV and V.

XVIII. RETENTION OF JURISDICTION

This Court shall retain jurisdiction to enforce the terms and conditions of this Decree and Agreement and to resolve disputes arising hereunder as may be necessary or appropriate for its implementation.

XIX. TERMINATION

This Decree and Agreement shall terminate when the defendant has complied with all applicable requirements of this Decree and Agreement and the United States and the

State have so certified.

The parties consent to entry of this Decree and Agreement without further notice.

For the United States:

s/ July 28, 1989
DONALD A. CARR Date
Acting Assistant Attorney
General
Land & Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

BENITO ROMANO
United States Attorney for
the Southern District of
New York

By: s/ August 3, 1989
RICHARD M. SCHWARTZ Date
GABRIEL W. GORENSTEIN
Assistant United States
Attorneys
One St. Andrews Plaza
New York, New York 10007

July 26, 1989
BRUCE C. BUCKHEIT Date
Senior Counsel
Environmental Enforcement
Section
Land & Natural Resources
Division

U.S. Department of Justice
Washington, D.C. 20530

For the United States Environmental Protection Agency :

s/ July 31, 1989
WILLIAM J. MUSZYNSKI Date
Acting Regional Administrator
Region II
U.S. Environmental
Protection Agency
New York, New York 10278

s/ July 28, 1989
EDWARD E. REICH Date
Acting Assistant Administrator for Enforcement and
Compliance Monitoring
U.S. Environmental Protection
Agency
Washington, D.C. 20460

July 26, 1989
CHARLES E. HOFFMAN Date
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental
Protection Agency

Region II
26 Federal Plaza
New York, New York 10278

s/ 8/3/89
ANN L. GOLDWEBER DATE
Assistant Attorney
General
New York State
Department of Law
120 Broadway
New York, New York

s/ July 26, 1989
THOMAS C. JORLING Date
Commissioner
New York State Department
of Environmental Conser-
vation
50 Wolf Road
Albany, New York 12233

For Westchester County:

7/31/89
WILLIAM G. BORGHARD Date
Commissioner
Westchester County
Department of Environmental
Facilities
600 Michaelian Office Building
148 Martine Avenue
White Plains, New York 10601

July 31, 1989
MARILYN J. SLAATTEN Date
Westchester County Attorney

600 Michaelian Office
Building
148 Martine Avenue
White Plains, New York 10601

Dated: New York, New York
August 7, 1991

s/Whitman Knapp
United States District Judge
Southern District of New York

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA AND
STATE OF NEW YORK,

Plaintiffs,

v.

COUNTY OF WESTCHESTER and
WESTCHESTER COUNTY DEPARTMENT OF
ENVIRONMENTAL FACILITIES,

Defendants.
----------x

CONSENT DECREE
DECREE AND
ENFORCEMENT
AGREEMENT
89 Civ. 5274 (WK)

The United States having moved for relief pursuant to the All Writs Act, 28 U.S.C. §1651(a), and this matter having been heard by this Court on Mya 10, 1990, and upon all prior proceedings heretofore had herein, IT IS HEREBY ORDERED as follows:

1. Pursuant to 28 U.S.C. §1651(a), this Court retains jurisdiction over the

Article 78 proceeding entitled Ludlow Park Homeowners Assoc. v. County of Westchester, which has been removed to this Court as 90 Civ. 2543 (WK) (S.D.N.Y.).

2. Pursuant ot 28 U.S.C. §1651(a), this Court enjoins any further litigation in state court of said Article 78 proceeding.

Dated: New York, New York
May 24, 1990

_____

UNITED STATES DISTRICT JUDGE